

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_

(Primary Sponsor)

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT AND THE MONTANA TITLE LOAN ACT BY CAPPING THE INTEREST RATE THAT MAY BE CHARGED ON DEFERRED DEPOSIT LOANS AND TITLE LOANS; AMENDING SECTIONS 31-1-106, 31-1-715, 31-1-722, AND 31-1-817, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 31-1-106, MCA, is amended to read:

**"31-1-106. Legal interest.** (1) Except as otherwise provided by the Uniform Commercial Code, ~~31-1-111~~ and 31-1-112, or 31-1-722, or 31-1-817, unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all money at the rate of 10% a year after it becomes due on:

(a) any instrument of writing, except a judgment;

(b) an account stated;

(c) money lent or due on any settlement of accounts from the date on which the balance is ascertained;

and

(d) money received for the use of another person and detained from that person.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year."

**Section 2.** Section 31-1-715, MCA, is amended to read:

**"31-1-715. Loan requirements -- right of rescission -- arbitration -- completion of transaction.** (1)

A deferred deposit loan may not have a term that exceeds 31 days.

(2) The amount of the deferred deposit loan, exclusive of the ~~fee~~ interest allowed in 31-1-722(2), may not exceed \$300.

(3) The minimum amount of a deferred deposit loan is \$50.

(4) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.

(5) (a) The loan agreement must contain a provision that the consumer may rescind the transaction if, by 5 p.m. of the licensee's first business day following the day that the loan was executed, the consumer provides the licensee with cash or certified funds equaling 100% of the amount loaned to the consumer.

(b) A licensee may not charge a consumer any fee or interest if the consumer rescinds the loan as provided in subsection (5)(a).

(c) Except as provided in subsection (5)(a), a consumer does not have a right to rescind the loan unless the licensee agrees to the rescission.

(6) (a) A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a consumer's rights.

(b) A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (6)(a).

(7) Only the licensee may make an electronic deduction from the consumer's account. The licensee shall ensure that information obtained from the consumer about the consumer's account remains confidential.

(8) The licensee shall provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in 31-1-721 upon consummation of the loan.

(9) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer.

(10) A deferred deposit loan transaction is completed when the licensee receives payment in full from the consumer in cash or, if payment is made by check or electronic transfer from the consumer's account, when the check or electronic transfer is debited to the consumer's account by the consumer's financial institution. Once a deferred deposit loan transaction is complete, a licensee may enter into a new deferred deposit loan with the consumer. Deferred deposit loans may not be renewed or extended."

**Section 3.** Section 31-1-722, MCA, is amended to read:

**"31-1-722. Prohibited and permitted fees -- interest -- attorney fees and costs.** (1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(2) ~~A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic~~

~~transaction, 25% of the principal amount of the deferred deposit loan. The maximum rate of interest that a deferred deposit licensee may receive for making and carrying any deferred deposit loan authorized by this part may not exceed an annual percentage rate of 36%, exclusive of the insufficient funds fees authorized in subsections (3) and (4).~~

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed \$30. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee may not collect damages under 27-1-717(3) for an insufficient funds check.

(4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on which the payment is due, a licensee may charge a fee, not to exceed \$30. Only one fee may be collected pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee may not collect damages under 27-1-717(3) for an electronic deduction for which there are insufficient funds.

(5) If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered into pursuant to this part."

**Section 4.** Section 31-1-817, MCA, is amended to read:

**"31-1-817. Interest rates -- fees charged.** (1) ~~The maximum rate of interest that a title lender may contract for and receive~~ for making and carrying any title loan authorized by this part may not exceed: an annual percentage rate of 36%, exclusive of the recording costs and service charges provided for in subsections (2) and (3).

~~(a) 25% for each 30-day period for the portion of a loan that does not exceed \$2,000;~~

~~(b) 18% for each 30-day period for the portion of a loan exceeding \$2,000 but not exceeding \$4,000; and~~

~~(c) 10% for each 30-day period, plus fees, on the portion of a loan that exceeds \$4,000.~~

(2) Title lenders may charge their actual costs of recording liens on borrowers' certificates of title.

(3) Title lenders may charge a service charge, as provided in 27-1-717, if there are insufficient funds to pay a check on the date of presentment. Title lenders may not collect damages under 27-1-717(3) based upon

1 the presentment of an insufficient funds check."

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3 NEW SECTION. **Section 5. Applicability.** [This act] applies to deferred deposit loans and title loans

4 entered into on or after [the effective date of this act].

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